

# Worse than Vallandigham

## Governor Oliver P. Morton, Lambdin P. Milligan, and the Military Arrest and Trial of Indiana State Senator Alexander J. Douglas During the Civil War

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My papa was an excellent public speaker. He often talked to me, in my youth, about the importance of voice cultivation, no matter what profession one practiced. If you wanted to make yourself attentively heard, either in public address or private conversation, you should pitch your voice in the lowest register at your command. High-keyed shouting would earn you nothing but the other fellow's suspicion that you were in doubt or insincere. You should be careful to enunciate your consonants clearly: the vowels would look after themselves. No matter what he talked about, when my papa spoke, his audience listened. You could hear a pin drop.<sup>1</sup>

On May 7, 1863, Indiana State Senator Alexander J. Douglas gave a speech at a Democratic rally in Crestline, Ohio. Douglas criticized the administration of Republican President Abraham Lincoln and its policies, stating that the army had interfered with Indiana local elections

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<sup>1</sup>Lloyd C. Douglas, *Time to Remember* (Cambridge, Mass., 1951), 39.

and had illegally arrested the leading Democratic critic of the Lincoln administration, Clement L. Vallandigham. Douglas urged fellow Democrats to fight back if necessary to protect their right to vote. On May 13, troops acting under orders from U.S. Brig. Gen. John S. Mason arrested Douglas at the railroad station as he waited to return to Indiana. The general acted after conferring with Ohio's governor, who in turn had received a tip from Crestline residents who had heard the speech. Prior to making the arrest, military authorities obtained approval from Ohio Senator John Sherman, at home during a break in Congress. Douglas was imprisoned in Cincinnati and tried by military commission, the same tribunal that had convicted former Ohio Congressman Vallandigham. Lambdin P. Milligan, whose name would feature in a subsequent United States Supreme Court landmark ruling—*Ex Parte Milligan*—served as Douglas's defense counsel. The commission found Douglas guilty of speaking disloyal sentiments and thereby violating a military edict—General Orders Number 38—promulgated by the commander of military forces in the District of the Ohio, Maj. Gen. Ambrose E. Burnside. However, Indiana's Republican Governor Oliver P. Morton intervened with President Abraham Lincoln and his administration, and astonished Burnside with the news that Lincoln and his cabinet disapproved of Vallandigham's arrest and Burnside's policy of military intervention into civil matters. With this news of the president's unhappiness with his actions, Burnside backed down from his aggressive policy and instructed his commission to find Douglas not guilty of the charge and released him. Furthermore, the commission disbanded, and no more military prosecutions under General Orders Number 38 occurred thereafter.

This brief overview, featuring an extraordinary cast of top national figures, reveals important events that occurred during the federal government's efforts to suppress a rebellion in the South and incipient unrest in the Old Northwestern states. However, the event is almost completely unknown to historians.<sup>2</sup> The arrest and trial of Vallandigham, occurring only days before, overshadowed the arrest and

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<sup>2</sup>A biographer of Lambdin P. Milligan made passing reference to the Douglas case, and reprinted Milligan's speech. See Darwin N. Kelley, *Milligan's Fight Against Lincoln* (New York, 1973). See also Craig D. Tenney, "Major General A. E. Burnside and the First Amendment: A Case Study of Civil War Freedom of Expression," Ph.D. dissertation, Indiana University, Bloomington, 1977, 189.

trial of Douglas, admittedly a political leader of much smaller stature. Nonetheless, Douglas's arrest and trial prompted the intervention of Governor Morton in an effort to avoid insurrection and bloodshed in Indiana and throughout the North. Morton's efforts ended a notorious episode in which military authorities violated the civil liberties of Northern citizens by curtailing the constitutional rights of free speech and a free press.

A study of the Douglas arrest and military commission trial is useful in evaluating historians' understanding of the widespread incidence of military arrests of Northern civilians during the American Civil War. Today, analysis of such arrests is dominated by the work of Mark E. Neely Jr. In his Pulitzer Prize-winning book, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (1991), Neely corrected long-held assumptions of generations of historians about where and how arrests occurred, and who was arrested. In a close examination of large quantities of Civil War-era records, Neely concluded that, indeed, under the Lincoln administration numerous arrests occurred in an effort to silence political opponents. He pointed to the rash of arrests to silence Democratic opponents in late summer and early fall of 1862 as the "lowest point for civil liberties in the North during the Civil War...and one of the lowest for civil liberties of all time in United States history." However, Neely lessened Lincoln's faults by noting that most arrests occurred in the border states, such as Kentucky and Missouri, where fierce guerrilla warfare and nebulous allegiance to both the Union and the Confederacy predominated. Moreover, thousands of arrests occurred for offenses that did not rise to issues of constitutionally protected civil liberties. These included selling liquor to soldiers, smuggling goods to the South, running blockades, and fraud and corruption in making contracts with the federal government to supply and feed the army. Such arrests were made amid the "friction and abrasion" of war, and very few rose to the level of a "politically significant" threat to civil liberties. By highlighting the vast number of incidental arrests in comparison to those of political significance, Neely tempered his criticism of Lincoln's record:

It seems unlikely that any significant number of arrests of politically important individuals have been overlooked. Such cases

provoked speeches in legislature, pamphlet protests, and newspaper copy. They were few in number. Most prisoners of state came from incidents of war.<sup>3</sup>

Little known as it is, Alexander J. Douglas's arrest merits careful consideration. It was important because it prompted Morton's intervention and intercession with Lincoln to rein in an army commander whose heavy-handed methods were creating havoc in the Midwest. The details of Douglas's arrest and its significance emerge from an examination of federal and state archives and manuscripts that most historians who have studied such arrests have overlooked. This study is the fruit of piecing together numerous strands found in disparate locations.

In examining the Douglas arrest in detail, we gain an understanding of important dynamics at work during the Civil War. First, the case shows the important role of a state executive in the creation of national policy. The arrest and trial created significant friction between military authorities and civil authority at the state level. Indiana Governor Morton intervened in the matter, and politically outmaneuvered General Burnside. Coming amid a larger power struggle between the governor and the general, the Douglas case added tension to their already strained working relationship. Second, Douglas's arrest generated local protests and rallies in both Ohio and Indiana.<sup>4</sup> Examining the arrest of a political leader of local significance, and the local opposition to the Lincoln administration it generated, will aid our understanding of how antiwar protest manifested itself throughout the North, and remind us not to ignore apparently local and insignificant events. Last, the episode helps shed light on the rise to prominence of Milligan, whose skillful legal defense in the military commission trial advanced him in the public's eye and encouraged him to play a leading role in both Democratic party politics and secret organizations to undermine the Lincoln administration in the North.

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<sup>3</sup>Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York, 1991), 53, 124, 132, 133. Neely first developed this thesis in "The Lincoln Administration and Arbitrary Arrests: A Reconsideration," *Journal of the Abraham Lincoln Association*, 5 (1983), 6-24.

<sup>4</sup>Neely argued that military arrests were few and did not greatly affect the Northern population: "Arbitrary arrests caused few remarkable disorders, no matter how sensational the case or how famous the victim." See Neely, "The Lincoln Administration and Arbitrary Arrests," 11.

Alexander J. Douglass was born in 1827 in Richland County, Ohio, near the town of Mansfield, the son of farmers. When Alexander was twelve, an attack of rheumatism crippled his father, rendering the older man unable to work. Alexander and his two younger brothers Thomas and Michael farmed the land to support their parents and two younger sisters. When not busy farming, Alexander attended a local school in the winter. Reputed to be a voracious reader as a youth, he began to teach school locally at eighteen. He soon enrolled at a local academy (or high school) at nearby Ashland, and then at Wittenberg College in Springfield, Ohio. It was at this time he dropped the second “s” in his family name. Douglas intended to study for a career in law, but the college aimed to produce pastors for Lutheran congregations. Notwithstanding that he and his family were Presbyterians, Douglas studied for the Lutheran ministry. However, he failed his examination for the pastorate and did not graduate, as the examining committee was not satisfied by his answers to questions on accepted doctrine.<sup>5</sup> His failure to receive full credentials did not hinder him from filling Lutheran pulpits for many years later in his life, nor from teaching in church schools up until his death. Shortly after leaving Wittenberg in 1850 he married Mary Jenner, of a prominent Richland County family.

Douglas’s failure to become a Lutheran pastor allowed him to revert to his earlier ambition to practice law. After teaching school for two years in Upper Sandusky, Ohio, he read law in the Mansfield firm of Samuel J. Kirkwood and Barnabas Burns. After three years of toil and study, Douglas passed the Ohio bar in 1855. The Douglas family resettled in Whitley County, Indiana, nearly due west of Richland County, Ohio, by about one-hundred-seventy miles. There the family grew, with a succession of children added to the couple. After teaching at the Wartburg Seminary, Douglas established a law practice in Columbia City and soon began to develop a name as an effective Democratic Party speaker and advocate. He won election as Whitley County prosecutor in 1858, and played an active role in public affairs in the county and the surrounding region. Appointment as county school examiner followed. Later in that year he offered himself for his party’s choice for state representative, but came in third place in the candidate selection process. In

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<sup>5</sup>Douglas, *Time to Remember*, 35-38. My thanks to the Wittenberg University alumni records office for their assistance.

addition to holding public offices, Douglas continued to teach at a local Lutheran school.<sup>6</sup>

In common with a substantial minority of his fellow Democrats at the outset of war in 1861, Douglas voiced his decided opposition to federal coercion. Reacting to a pro-war sermon preached in a local Lutheran church, he announced in a long letter in Columbia City's Democratic newspaper that he did not want "blood on my garments." A speech at a county party convention in September 1861 again embroiled him in dispute. While denying that he termed a recently recruited volunteer company a bunch of "yellow legged abolitionists," he admitted to having said that there was "disloyalty in places where loyalty was pretended." The denominational and oratorical controversies do not appear to have damaged his standing in the community, at least among the Democratic majority: Douglas won reappointment as county school examiner, and the newspaper reported that his private, Lutheran school enjoyed a large enrollment.<sup>7</sup>

Democrats in Whitley County selected Douglas to represent them as a delegate at the important January 8, 1862, state party convention in Indianapolis. There, state Democrats resolved on a strongly worded anti-war "Union as it was, and the supremacy of the Constitution" platform. Though not without disputes among factions within the party, Democrats denounced the Lincoln administration's policies to coerce the Southern states as illegal and unconstitutional, and demanded that the federal government begin peaceful efforts to reunite the country. Emancipation of slaves and the interference with states' institutions they denounced. The suspension of the privilege of the writ of habeas corpus leading to "arbitrary arrests" of civilians and violent suppression of Democratic newspapers critical of Republican party policies they deplored.<sup>8</sup>

In the coming months newspapers in the northeastern Indiana region reported Douglas's speeches in a number of towns. In July,

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<sup>6</sup>*A Biographical History of Eminent and Self-made Men of the State of Indiana*.... 2 vols. (Cincinnati, Ohio, 1880), vol. 2, District 12, pp. 23-24. Kirkwood subsequently moved to Iowa and became Governor and United States Senator. See Dan Elbert Clark, *Samuel Jordan Kirkwood*, Iowa Biographical Series (Iowa City, 1917). Barnabas Burns during the Civil War commanded an Ohio volunteer regiment and was a prominent pro-war Democrat.

<sup>7</sup>*Columbia City News*, May 21, May 28, June 4, June 11, June 18, June 25, September 10, 1861.

<sup>8</sup>Kenneth M. Stampp, *Indiana Politics during the Civil War* (1949; Bloomington, Ind., 1978), 129-33; Emma Lou Thornbrough, *Indiana in the Civil War Era, 1850-1880* (Indianapolis, 1965), 118.

Democrats from Huntington and Whitley Counties chose him to be their candidate for state senator in the upcoming election. Douglas campaigned vigorously through the two counties, following many of the tenets established by the state party at its January convention and winning praise for having “backbone” and being a good speaker.<sup>9</sup> In keeping with the party platform plank of denouncing Northern sectionalism as the source of civil war, he stated that noted New England abolitionist Wendell Phillips and his ilk were worse disunionists than Jefferson Davis, the president of the rebel Southern Confederacy.<sup>10</sup> Fellow Democratic antiwar firebrand Lambdin P. Milligan, a Huntington attorney, often shared the platform where Douglas spoke. Milligan at the time had sought the Democratic nomination for the U.S. House of Representatives for the 11th District in the counties around Fort Wayne, but was rebuffed. Still, he campaigned energetically in the summer and fall, and in a Whitley County speech blasted the Lincoln administration’s illegal war, asserted that the administration did not wish to suppress the rebellion, and claimed the honor of being the first person in Indiana to denounce “this war as unnecessary, unjust and infamous!”<sup>11</sup> In Indiana’s 1862 congressional election, Democratic candidates rode the wave of their party’s revival, based on public displeasure with the Lincoln administration’s failures to subdue the rebellion and on indignation at the preliminary Emancipation Proclamation, military arrests of civilians, suppression of the Democratic press, and other Republican policies. Democratic candidates in Indiana nearly swept their races, and their party regained majorities in both chambers of the General Assembly. Douglas handily defeated his Republican opponent by a majority of 301 votes.

At the opening of the General Assembly in January 1863, Douglas and his fellow Democrats enjoyed their restored preeminence in the state legislature, and promised the party faithful that they would, among other things, clip the wings of Indiana’s domineering Republican gover-

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<sup>9</sup>*Fort Wayne Weekly Sentinel*, August 2, 1862.

<sup>10</sup>*Columbia City News*, July 22, July 29, 1862.

<sup>11</sup>See the *Columbia City Republican*, n.d., reprinted in the *Huntington Indiana Herald*, August 6, 1862. Morton’s private secretary, W. R. Holloway, sent a clipping of the *Herald* article to United States Attorney for Indiana, John Hanna, and wrote: “Enclosed please find some extracts from the *Huntington Herald*. He should be arrested at once. Please give this your personal and immediate attention.” Holloway to Hanna, August 15, 1862, in John Hanna Papers, Lilly Library, Indiana University, Bloomington.



Indiana Governor Oliver P. Morton. Morton opposed both the antiwar plans of the state's Democrat-controlled legislature and the attempts of Maj. Gen. Ambrose Burnside to control public speech.

Courtesy of the Indiana Historical Society

nor. The power struggle in the 1863 session between the majority Democrats and the minority Republicans led by Morton was undoubtedly the most dangerously contentious in the General Assembly's history. Douglas, though a new state senator and generally quiet during the vituperative debates, participated in the raucous session. Caucus leaders appointed him to several committees, most importantly the Senate Committee on Education, where he employed his teaching experience in crafting and rewriting legislation to fit Democratic racial ideology.<sup>12</sup>

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<sup>12</sup>*Brevier Legislative Reports* (South Bend, 1863), 80, 127, 153. Works on the 1863 General Assembly include Lorna Lutes Sylvester, "Oliver P. Morton and the Indiana Legislature of 1863," in Robert G. Barrows, ed., *Their Infinite Variety: Essays on Indiana Politicians*, Indiana Historical Collections, vol. 53 (Indianapolis, 1981), 123-54; and Justin E. Walsh, *The Centennial History of the Indiana General Assembly, 1816-1987* (Indianapolis, 1987).



Douglas raised his voice to speak in the Senate on other issues pertaining to race. In February he spoke to amend a resolution from the Committee on Federal Affairs that the Lincoln administration, in possible peace talks with the “seceded States,” should not interfere with the rights of the Southern states to protect slavery. Two days later, in a debate on the merits or dangers of arming ex-slaves for service in the Union army, he questioned a Republican senator about the possibility of Lincoln withdrawing the Emancipation Proclamation: “Suppose he takes it back, won’t he stand just where he did before he issued it?”<sup>13</sup>

Douglas saved his eloquence for an impassioned address near the end of the session during a debate on how the General Assembly should communicate its views to Indiana’s soldiers in the field. Many Indiana regiments, irritated by Democratic sentiment in the North, which they increasingly viewed as disloyal, had sent threatening memorials to the Democrat-controlled legislature in disapproval of its utterances and efforts, most notably its attempts to wrest power from Morton. Douglas rose to defend the majority-written report that was to be sent to the Indiana troops, depicting Democratic legislators as “true and loyal men.” He castigated the Republican minority report for encouraging the army to believe the Democrats were disloyal. “You are afraid the army will have faith and confidence in the Democratic party, and you are working might and main against it.” Sending the majority report, Douglas maintained, would show the troops that the Democrats were “ready and willing to stand up for that unity of Government—the Union—the entire Union.” He also accused Republicans of attempting to monopolize power. Responding to an opposing senator’s statement that Republicans controlled “more type and presses and papers than we,” Douglas replied:

Yes, well may he say it; and in a short time they will [have] all of them, for they are demolishing Democratic presses one after another until bye and bye we will not have a Democratic press left us. Saturday night Samuel Medary’s press went down—one after another they are blotted out by this *loyal* party.<sup>14</sup>

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<sup>13</sup>*Brevier Legislative Reports* (1863), 131, 138.

<sup>14</sup>*Ibid.*, 228-29. Leading Ohio peace Democrat Samuel Medary and his newspaper, *The Crisis*, suffered violent attacks and arrest during the Civil War. See Reed W. Smith, *Samuel Medary and The Crisis: Testing the Limits of Press Freedom* (Columbus, Ohio, 1995).

When Republican legislators “bolted” the session and the capitol, leaving the Democrats without a legal quorum to do business, the session collapsed and ended. Douglas returned home to Columbia City on the March 10 morning train, “looking well” in the eyes of the town’s Democratic newspaper editor, and resumed his legal practice. As the Assembly had not passed a budget bill to fund state government, Democratic legislators confidently expected to be called back into special session by the governor. Democrats would then pass legislation to wrest military power from the governor and take control of state government. But Morton quite illegally opted not to call a special session, and instead borrowed funds from private banks, Republican-controlled county governments, and the War Department to pay necessary state expenses. The frustrated Democratic legislators stayed home. Douglas attended to business and played an active role in party affairs, participating in the raucous Democratic meeting at Fort Wayne on April 29.<sup>15</sup>

In early May, Senator Douglas and two of his daughters traveled to his hometown of Mansfield, Ohio, to attend the wedding of his younger brother, Capt. Thomas E. Douglass, and to visit family. The captain, commanding a company of Richland County recruits in the 15th Ohio Volunteer Infantry Regiment, had been shot through the lungs at the battle of Stones River in Tennessee in early January.<sup>16</sup> The visit should have been a pleasant interlude, an opportunity for the Indiana Democrat to mend fences with his Republican brothers amid the wedding festivities and the celebration of the captain’s survival. However, the senator was pulled into the maelstrom of Ohio and national politics. Former Ohio Congressman Clement L. Vallandigham, the Midwest’s leading antiwar political figure, had returned from Washington, D.C., intent on stirring up the Democratic Party in his state. Voted out of the U.S. House of Representatives after his congressional district was gerrymandered to favor a Republican candidate, Vallandigham was intent on securing the Democratic nomination for governor of Ohio at the state party convention in June. Speaking at several venues in the state, Vallandigham worked to mobilize the strong antiwar wing of the party and to gain its

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<sup>15</sup>*Columbia City News*, March 10, 1863; (Fort Wayne) *Dawson’s Daily Times and Union*, April 30, 1863. Leading antiwar Democrats Milligan and Harrison H. Dodd, among others, spoke at the Fort Wayne rally.

<sup>16</sup>Alexis Cope, *The Fifteenth Ohio Volunteers and Its Campaigns, War of 1861-5* (Columbus, Ohio, 1916), 245.

backing for his nomination. At a rally at Columbus on April 30, he attacked Burnside's General Orders Number 38. The general's order, announced earlier in the month, came as a reaction to rising antiwar sentiment in the states under his command. Burnside was intent on stamping it out, and aimed to use military power to do so. The order stated that "treason expressed or implied will not be tolerated," and that expressions of opposition to the government and/or sympathy for the Southern rebels would be punished by military authority. Burnside had publicly stated his view that military authority was "invested with a little more power [than civil authority] in suppressing anything like treason, and acts that tend to create dissention."<sup>17</sup> Vallandigham ripped into the order as an illegal and unconstitutional usurpation of authority and a violation of free speech. The following day Vallandigham spoke to a large Democratic audience at Mount Vernon, Ohio, and again castigated Burnside's military order in rich terms. On this occasion, the general had sent observers to the meeting who reported back the substance of the speech. Burnside dispatched a company of troops to Vallandigham's hometown of Dayton to arrest the speaker. There, in the dark, early morning hours of May 5, troops surrounded his house, battered the door down, and arrested the former congressman. They took Vallandigham to Burnside's Cincinnati headquarters and deposited him securely in Kemper Barracks, a military prison there. Burnside acted promptly to initiate a military commission trial of the prisoner for violating his general orders.<sup>18</sup>

Dayton dissolved into chaos when daylight came. Alerted to the news of Vallandigham's arrest, Democrats from surrounding communities poured into the city to join their compatriots in riot, torched the city's Republican newspaper, and managed to burn part of the downtown in the process. Troops arrived from Cincinnati and Columbus, battled the rioters, and put out the fires. Military commanders, with the assent of Ohio Governor David Tod, imposed martial law on the city, arrested many rioters, and restored order. Burnside quickly convened a military commission trial for Vallandigham on the morning of May 6,

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<sup>17</sup>*Cincinnati Daily Commercial*, April 20, 1863.

<sup>18</sup>Frank L. Klement, *The Limits of Dissent: Clement L. Vallandigham and the Civil War* (1970; New York, 1998), 152-60, 164-66; William Marvel, *Burnside* (Chapel Hill, N.C., 1991), 235-37. See also Michael Kent Curtis, "Lincoln, Vallandigham, and Anti-war Speech in the Civil War," *William and Mary Bill of Rights Journal*, 7 (December 1998), 105-191.

and on that day an army captain (one of two officers sent to hear the speech, both dressed in civilian clothes) testified as to what he saw and heard of the Democrat's speech at Mt. Vernon. The trial continued for another day, and in the evening of May 7 the commission found the former congressman guilty of publicly expressing sympathy for the rebels in arms against the United States, in violation of General Orders Number 38. The Cincinnati newspapers reported on the trial in detail, and the news spread throughout the country.<sup>19</sup>

While Republicans and pro-war Democrats rejoiced at the news of Vallandigham's arrest, the reports provoked both shock and outrage among Democrats throughout the Northwest. Ohio Democrats were stunned. Democrats in Crestline, a railroad junction town five miles west of Mansfield, were especially shaken. They had expected Vallandigham to speak there on May 7 as the star attraction at a party rally. Casting about, organizers invited visiting Indiana State Senator Douglas to speak in his stead.<sup>20</sup>

On a "dark, dreary and dismal" Thursday afternoon which threatened rain, two days after Vallandigham's military arrest and the Dayton riot suppressed by martial law, Douglas, local speakers, assembled Democrats, and other onlookers moved the open-air rally indoors and huddled in a large stable on the edge of the town. Democrats in the audience "gave three cheers for Val., and three groans for General Burnside." According to an eyewitness account of the rally published in the Republican *Bucyrus Weekly Journal* newspaper, handbills circulated in the town stating that Vallandigham had been killed. The crowd, angry, loud, and boisterous, had been warmed up by two speakers before Douglas. They had been warmed up as well by the "kindly influences of free whisky." The Democrats directed rude epithets and threats at the Republican onlookers in attendance. Cheers for "Jeff. Davis" and cries of "d——d abolitionist" emanated from the crowd. "Frequently during the speeches, when anything was said by the speakers that was, in the estimation of the secesh sympathizers, severe on the Administration, or any of our Union Generals, a lot of the butternuts would call out—'That's

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<sup>19</sup>Klement, *The Limits of Dissent*, 166-68. The transcript of the trial appears in *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, 1899), series 2, vol. 5, 634ff, hereafter cited as OR.

<sup>20</sup>Crestline Democrats polled a two-hundred-vote majority in their township elections in early April. *Cincinnati Daily Enquirer*, April 9, 1863.

what's the matter, by G-d.'" When it was his turn to speak, according to the report, Douglas

said he did not like the name Copperhead. Some one in the crowd suggested that it was altogether appropriate. He then pronounced a eulogy on Val.; then abused the Administration; then slandered a certain Judge Harris; and then slandered the protestant churches. He never had, and never would support the war policy of the Administration. He, the speaker, advised, though a marshal might be present, the crowd to buy powder and lead and resist military arrests. He called our Government the greatest despotism in the world. Resolutions were here offered, for which see *Forum*.

The resolutions passed at the rally included a statement repudiating military arrests of civilians. Several additional speakers addressed the rally before it wrapped up late in the afternoon.<sup>21</sup>

The pro-Union eyewitness to the rally who wrote the account for the *Journal* significantly noted the presence of other Unionists at the rally. "Union men who were present, who did not say aught, were abused; and were personally pointed out by some of the hearers, and also some of the speakers, as spies." The Crestline audience knew from reading the Cincinnati newspaper reports of the first day of the Vallandigham trial that the army's prosecution rested on the testimony of an army officer in civilian clothes planted in the audience. Democrats also resented the rise of the Union League movement, a Republican network of secret lodges consciously organized as a counter-balance to the Democrats' secret Knights of the Golden Circle lodges throughout the Midwest. As the war continued, tensions increased between these antag-

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<sup>21</sup>*Bucyrus Weekly Journal*, May 15, 1863. The *Forum* referred to is the *Crawford County Forum*, the Democratic newspaper of Bucyrus, copies of which for the dates in question are not extant. Leading Ohio antiwar Democrat Samuel Medary's newspaper *The Crisis* also reported that Douglas spoke at the Crestline meeting and printed the resolutions passed. It later noted Douglas's arrest. See *The Crisis* of May 20 and May 27, 1863. The *Huntington Democrat* later noted that Douglas also spoke at Riblet's School House in Richland County on May 8. See *Huntington Democrat*, August 6, 1863. The *Bucyrus Weekly Journal* of May 15 also reprinted a Cleveland newspaper piece noting that a United States marshal was indeed in attendance at the Crestline rally.

onistic groups, and both sides began to arm themselves in preparation for violent conflict. Thus, amid the growing tension, the *Journal's* eyewitness wrote: "it would not have been safe for a Union man to have attempted to report the speeches with pencil and paper." But "[t]here were men present at the butternut meeting who *did hear*, and who are willing to tell publicly what they heard."<sup>22</sup>

The Unionists in Crestline took matters into their own hands. Evidence suggests they reported the speech to government authorities and requested government intervention to punish the speaker. News of Douglas's speech reached Governor Tod by May 12. W. W. Bagley, the Crestline agent of the Cleveland, Columbus & Cincinnati Railroad, telegraphed:

Competent authority to decide upon charges preferred being sufficient to warrant arrest as also to make the arrest should be sent here and thence to Mansfield today. ~~The evidence is already~~ [crossed out in original telegram] The man goes to Indiana tomorrow morning —The evidence is all ready & the charge if anything worse than those preferred against Vallandigham. This move breaks in upon an organization to arm as against arrests. Parties preferring the charges are here waiting.<sup>23</sup>

Tod, a lifelong Democrat, had been a firm supporter of the federal war effort from the beginning of the war. In the matter at hand he acted

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<sup>22</sup>*Bucyrus Weekly Journal*, May 15, 1863. For a study of the rise of the Union Leagues in the North during the Civil War, see Frank L. Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge, La., 1984), 34-63. Klement discounted the existence of the Knights of the Golden Circle organization, suggesting that it was merely a Republican "concoction" employed to portray Democrats as traitors. See Klement, *Dark Lanterns*, 7-33, and also his *The Copperheads in the Middle West* (Chicago, 1960); "Carrington and the Golden Circle Legend in Indiana during the Civil War," *Indiana Magazine of History*, 61 (March 1965), 31-52; "Ohio and the Knights of the Golden Circle: The Evolution of a Civil War Myth," *Cincinnati Historical Society Bulletin*, 32 (Spring-Summer 1974), 7-27. Klement's thesis of the nonexistence of the KGC has been influential among historians, but some have begun to challenge it. See Jennifer L. Weber, *Copperheads: The Rise and Fall of Lincoln's Opponents in the North* (New York, 2006).

<sup>23</sup>Bagley to Tod, May 12, 1863, in State Archives Series 145, Telegram Received, box 50,006B, box 6, folder 2, Ohio Historical Society, Columbus, Ohio; a copy of the telegram appears also in RG 109 M345, roll 76, National Archives and Records Administration, Washington, D.C., hereafter cited as NARA.

promptly to punish opposition speech. That day he consulted with the commander of U.S. Army forces at Columbus, Brig. Gen. John S. Mason. Mason agreed to send a junior officer, Lt. J. B. Irwin, immediately to Crestline and Mansfield to investigate the circumstances. Mason's orders specified that:

If upon learning from [Bagley] a full statement of the case, you are fully satisfied that it is sufficiently aggravated to warrant an arrest, and if the party is of sufficient importance, you will proceed to Mansfield Ohio, where you will consult with Mr. John Sherman, and if in his opinion the best interests of the service will be advanced, by so doing, you will take the necessary affidavits and arrest the party, or parties, and bring them to this city.<sup>24</sup>

Mr. John Sherman was in fact Republican U.S. Senator John Sherman, resident of Mansfield, at home during Congress's spring recess. The senator, an important leader in Washington, had spoken a few days earlier at the Union rally in Fort Wayne, Indiana, which had provoked a riot in that strongly Democratic city. On May 7, the day of the nearby Crestline Democratic rally and Douglas's speech, Sherman wrote from Mansfield to his brother, Maj. Gen. William Tecumseh Sherman, then in Mississippi fighting to capture the rebel stronghold of Vicksburg. Senator Sherman's assessment of the mood in Ohio immediately after Vallandigham's arrest was favorable but cautious:

Here nothing occurs worth noting. If there is any change it is for the better. The tone of popular opinion is more patriotic[.] There are fewer noisy Butternuts, and most of those think their bad talk is only from opposition to the Administration. The only danger is that this will become downright opposition and resistance to the war be the inevitable result. A good many scary people are afraid of this but I am too much accustomed to political quarrels to

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<sup>24</sup>Unsigned letter, probably written by Mason's assistant adjutant general, Capt. John Green, to Lt. Irwin, May 12, 1863, RG 393 Part IV, Post of Columbus, Ohio Records, E 270, Letters Sent, NARA; a copy also is found in RG 109 M345, roll 76, NARA.

look for danger from them. There may be occasional riots as there was one the other day in Fort Wayne, when I made a speech but both parties pledged themselves in the war and only differed about the nigger and administration measures. The difference may widen and unless we have military success will widen until we have open and hostile "war" and "Peace" parties.<sup>25</sup>

Sherman no doubt had heard reports of the Crestline speeches, and so when the army lieutenant called on him he approved the arrest. Having found Douglas to be sufficiently important, Lieutenant Irwin and troops under his command made the arrest at the railroad station at Crestline the following morning, May 13, where the *Indiana Democrat* was awaiting a homeward train with his two young daughters, Alice and Elizabeth. The troops carried Douglas away, leaving the two girls alone at the train station. The troops took their prisoner to Columbus, where Douglas was held in the City Barracks. That day Mason sent Douglas under guard to Cincinnati, and wrote to his immediate superior, Brig. Gen. Jacob D. Cox at Cincinnati, commander of the military district of Ohio, with copies of the paperwork generated in the matter. Mason wrote, "The party was sent at the suggestion of the Governor. At his request also I will send an officer with a party of twelve or fifteen men to

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<sup>25</sup>John Sherman to William T. Sherman, May 7, 1863, in William Tecumseh Sherman Papers, microfilm roll 7, Library of Congress, Washington, D.C. A daughter of Gen. Sherman published edited texts of the two brothers' letters in 1894, a time when Senator Sherman was still alive (he died in 1900). The editing was so extensive as to create severe distortions of meaning. A comparison of the edited version of John Sherman's long letter of May 7 to the original letter reveals striking omissions in the published version. Editor Rachel Sherman Thorndyke excised the senator's scathing references to President Lincoln that revealed his lack of confidence in the occupant of the White House. He wrote originally: "How fervently I wish Lincoln was out of the way. Anybody would do better. I was among the first of his political friends to acknowledge how fearfully we were mistaken in him. He has not a single quality helping his plea.... He is as unstable as water—afraid of a child.... [H]e is unfit to control events and it is fearful to think what may come during his time. What he will do now it is impossible to say. He is subject to the deepest depression of spirits amounting to Monomania. He looked upon Hooker as his last card.... [T]he war is prolonged, and but little chance of its ending until we have a new *deal* (a new President).... I certainly would be glad to support a War Democrat—any body rather than our monkey President. If the latter is renominated which I do not anticipate then I certainly will raise the banner of opposition. The Nation could not endure his reelection." Ibid. None of these comments appears in the published version. See Rachel Sherman Thorndyke, *The Sherman Letters: Correspondence Between General and Senator Sherman from 1837 to 1891* (New York, 1894), 203-205.



Crestline this afternoon as he has an intimation of trouble there which he thinks can be prevented by a small force.”<sup>26</sup>

The arrest of Douglas at Crestline created a furor among the town’s Democrats. Ohio newspapers reported that Democrats “threatened to tear up the railroad,” “burn the town,” and “mob the Union men,” but the squad of seventeen troops sent from Columbus on Governor Tod’s suggestion quelled the disturbance. The newspapers reported that Douglas had “advised resistance to the conscription,” and was arrested for violating General Orders Number 38.<sup>27</sup>

General Cox promptly turned Douglas over to his superior, Major General Burnside, commander of the Department of the Ohio. Burnside’s officers imprisoned Douglas in Kemper Barracks, on Columbia Street in Cincinnati, described by one of Burnside’s staff officers as “our Libby Prison.” It housed many of the prisoners arrested by Burnside’s orders, including Vallandigham and several Dayton rioters, along with deserters and spies. One of several military prisons in the city, Kemper held “over two hundred rebel, civil, and political prisoners...of all classes, conditions and sexes.”<sup>28</sup> Most of the prisoners hailed from Kentucky. According to one of Burnside’s staff officers, General Orders Number 38 had had the effect of filling the military prisons. Two companies of troops surrounded and guarded the prison, a miserable hole from which prisoners desperately wanted release. During the first week

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<sup>26</sup>Gen. Mason to Gen. Cox, May 13, 1863, RG 393 Part IV, E 270, NARA; also found in RG 109 M345, roll 76, NARA. After his release Douglas described his arrest in several speeches. A newspaper reported Douglas’s speech at the July 18 Democratic meeting at Warren in Huntington County: “He had been on a visit to Ohio with his two little daughters; had received after a week’s sojourn, a telegram announcing the sudden illness of his wife, and prepared to come home. He was seized at the railroad station by a military squad, dragged away from his two children, who were left among strangers with no one to take care of them, and hurried away to a military prison.” Douglas also said he was “cheered in his confinement by the Spartan like firmness of his wife, whose soothing letters inspired him. She advised him not to take the oath of allegiance; and to remain steadfast to Democratic principles.” *Huntington Democrat*, July 23, 1863. The troops also arrested a deserter in Mansfield during the expedition. *Bucyrus Weekly Journal*, May 15, 1863.

<sup>27</sup>*Cincinnati Daily Commercial*, May 14, 1863; *Cincinnati Daily Gazette*, May 14, 1863; (Columbus) *Daily Ohio State Journal*, May 14, 1863.

<sup>28</sup>Journal of Daniel Read Larned, entry of May 14, 1863, Daniel Read Larned Papers, Library of Congress, hereafter Larned Papers; Arnold Shankman, ed., “Vallandigham’s Arrest and the 1863 Dayton Riot—Two Letters,” *Ohio History*, 79 (Spring 1970), 122. The *Cincinnati Daily Enquirer* of May 15, 1863, stated one hundred and eighteen political prisoners were held in Kemper Barracks at the time.



Major General Ambrose Burnside, c. 1861. His General Orders Number 38 attempted to punish civilian speech opposing Lincoln and the war.

Courtesy of the Library of Congress

of Douglas's imprisonment, guards foiled an escape attempt by thirty inmates when the wife of one of the men alerted officers.<sup>29</sup>

Widespread accolades and congratulations showered on Burnside from Republican newspapers after Vallandigham's and Douglas's arrests. The *Cincinnati Daily Commercial*, a major Republican newspaper, editorialized:

Words can be made as mischievous as bullets, and are certain to develop themselves in acts. Where, as in Dayton, Crestline, Lancaster, and other points there are repeated outbreaks in opposition to the authority of the Government, and a seditious spirit manifests itself, we may be sure that the freedom of speech and the press has been perverted to mischievous objects, and unrestrained, will lead to deplorable consequences. No truly loyal man, however, feels that Order no. 38 is a burden upon him.<sup>30</sup>

Buoyed by this reception, Burnside and his staff prepared to put Douglas up for trial before the same military commission that heard Vallandigham's case and other alleged violations of General Orders Number 38. Within a week of the Indiana Democrat's arrest, military authorities in Cincinnati and Columbus prepared affidavits and gathered the witnesses to the Crestline speech.<sup>31</sup> Capt. James Madison Cutts Jr., the judge advocate who tried Vallandigham, left Cincinnati for Washington, D.C., to attend his father's funeral and so was not available to lead the prosecution. In his stead, Burnside appointed Capt. Robert Hale Ives Goddard, a trusted staff officer, to serve as judge advocate in the Douglas trial. A member of a prominent Rhode Island family and Brown University graduate, Goddard worked to prepare the army's case, ordering prosecution witnesses from Crestline to report at departmental headquarters at Cincinnati on May 26. The following day he requested

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<sup>29</sup>*Cincinnati Daily Commercial*, May 8, 1863; testimony of Capt. James M. Cutts, Jr., Exhibit "N," court martial case file of Capt. James M. Cutts, Jr., MM-0873, RG 153, NARA; *Cincinnati Daily Gazette*, May 19, 1863.

<sup>30</sup>*Cincinnati Daily Commercial*, May 15, 1863; Larned journal entry of May 14, 1863, Larned Papers.

<sup>31</sup>Capt. John Green to Lt. [?], May 19, 1863, and Gen. Mason to Maj. Bascom, May 20, 1863, RG 393 Part IV, E270, NARA.

defense witnesses to come to Cincinnati for the trial. The Douglas trial was scheduled to commence on May 29.<sup>32</sup>

Several days after the arrest, the *Indianapolis Daily Journal* reported the events of May 13 at Crestline briefly and in passing. The news of Douglas's arrest appears not to have reached his hometown promptly. The Huntington *Democrat*, a weekly newspaper, first reported the story in its May 21 edition. It noted that the charges against him were not known, but presumed that Douglas "spoke his mind rather freely in relation to the designs of the men in power." The Huntington *Indiana Herald*, a Republican weekly, shortly thereafter reported that Huntington resident and leading county Democrat Milligan was then in Cincinnati serving as Douglas's defense counsel. In Milligan, Douglas had secured an experienced trial attorney to defend him. However, no evidence exists to suggest that Milligan had participated in any courts martial or military commissions prior to his employment by Douglas.<sup>33</sup>

Another important Indiana figure became involved in the Douglas arrest case. At the time of the arrest, Governor Morton had been embroiled in a series of disputes with General Burnside and Burnside's subordinate Indiana commander, Brig. Gen. Milo S. Hascall. Burnside had appointed Hascall to be commander of the military district of Indiana on April 22 without consulting with the governor. Three days later, Hascall promulgated (with Burnside's blessing) his own order banning opposition political speech in Indiana to be enforced by military power—General Orders Number 9. The order, modeled on Burnside's, was Hascall's effort to stifle Democratic criticism of the Lincoln administration and the army's performance, and was tailored specifically for Indiana. Burnside and Hascall aimed to use the military power at their disposal to silence criticism and opposition to the government. Both

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<sup>32</sup>Capt. R. H. Goddard to Gen. Mason, May 26, 1863, and Gen. Burnside to Gen. Mason, May 27, 1863, RG 393 Part IV, Camp Chase, Ohio Records, E 202, Telegrams Received, NARA.

<sup>33</sup>*Indianapolis Daily Journal*, May 18, 1863. Confusion in the Ohio newspapers as to Douglas's identity may have been the reason for the news reaching Indiana slowly. Some newspaper reports identified him as a Crestline resident; other newspapers claimed he was the editor of the *Columbia City News*. This may explain why there was neither a groundswell of indignation nor threats of violence in Whitley County and Columbia City immediately after his arrest. The first major Ohio newspaper to identify Douglas as an Indiana state senator was the *Cincinnati Daily Gazette* of May 26, 1863, with a telegraph dispatch from Indianapolis dated May 25. The *Gazette* was the regular conduit for leaks from Morton's office. The *Columbia City News* first reported the event in its May 26 edition, citing the *Crawford County (Ohio) Forum*.

military orders enraged the Republican Morton, who saw that such heavy-handed and shortsighted military measures would undercut his authority in the state, and would reverse the gains he had made that spring in harnessing Democrats both in and out of the General Assembly. Equipped with intelligence that Democrats were arming and preparing to resist government authority in several locales in Indiana, Morton was concerned that blunderbuss tactics employed by military leaders would foment uprisings. In late April, the governor succeeded in persuading the generals not to launch a military expedition to Brown County after a soldier and a Democratic state legislator were shot dead at a political rally and hundreds of armed Democrats assembled to resist government authority.<sup>34</sup> However, in early May, Hascall arrested several Indiana Democratic newspaper editors who had dared to criticize or mock General Orders Number 9, and threatened other Democratic editors with the same fate. A short period followed when opposition speech in Indiana was muted from fear of arrest, but soon leading Democratic political figures rallied across the state to condemn the military edicts. Morton informed Hascall that he viewed both General Orders 9 and 38 as illegal and counterproductive, and that he considered the arrest and trial of Vallandigham by military commission as illegal. Hascall wrote Burnside to report on his alarming conversation with the governor, and warned his superior to beware of Morton. Taking the matter in hand, the governor traveled to Washington, D.C., several times in the month of May in an effort to depose both Hascall and Burnside. There he lobbied President Lincoln and cabinet members, most importantly Secretary of War Edwin M. Stanton, to dismiss both of the generals.<sup>35</sup>

Lincoln had appointed Burnside to the command at Cincinnati as recently as March, the general having been relieved from command of the Army of the Potomac after the disastrous battle of Fredericksburg in December 1862. The president hoped that the general, too prominent to leave unemployed, would be out of the way yet able to build up and lead a large force to invade eastern Tennessee. Though warned repeatedly by Morton and other governors in the winter and early spring of 1863 of

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<sup>34</sup>G. R. Tredway, *Democratic Opposition to the Lincoln Administration in Indiana*, Indiana Historical Collections, vol. 48 (Indianapolis, 1973), 80-83.

<sup>35</sup>See Stephen E. Towne, "Killing the Serpent Speedily: Governor Morton, General Hascall, and the Suppression of the Democratic Press in Indiana, 1863," *Civil War History*, 52 (March 2006), 41-65.

the dangerous condition of political affairs in their states, Lincoln did not pay close attention or heed the governors' advice. When conflict between the governors and Burnside arose over the military's heavy-handed tactics and intrusion into civil matters, and when chaos threatened to break out throughout the Old Northwest, the president was unprepared. The political embarrassment of yet again removing Burnside—popular among many Republicans who relished the general's get-tough edict—was too risky. In a private meeting on May 19, the president's cabinet members unanimously regretted Burnside's arrest of Vallandigham. While the arrest had been popular among Republicans, Democrats could now rally around the martyred former congressman and hold him up as a victim of unconstitutional measures by the Lincoln administration.<sup>36</sup> Democrats throughout the North did just that, and Vallandigham became a national hero for Lincoln's opponents in every Northern state.

During his whirlwind visits to the national capitol in May, Morton learned that the President and his cabinet were displeased with Burnside's actions. While he failed to have Burnside sacked, Morton returned to Indianapolis with a promise that Hascall would be removed from his Indiana command. Significantly, during this period in May neither Lincoln nor his cabinet communicated their displeasure about the Vallandigham arrest to Burnside. Indeed, Stanton telegraphed the general shortly after the arrest, stating "In your determination to support the authority of the Government and suppress treason in your department, you may count on the firm support of the President." Burnside interpreted this message as hearty support for his policy of arrests for political speech.<sup>37</sup>

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<sup>36</sup>"The case of Vallandigham, recently arrested by General Burnside, tried by court martial, convicted of something and sentenced to Fort Warren was before the Cabinet. It was an error on the part of Burnside. All regretted the arrest, but having been made every one wished he had been sent over the lines to the Rebels with whom he sympathizes. Until the subject is legitimately before us, and there is a necessity to act there is no disposition to meddle with the case." Entry of May 19, 1863, in Howard K. Beale and Alan W. Brownsword, eds., *Diary of Gideon Welles, Secretary of the Navy Under Lincoln and Johnson*, 3 vols. (New York, 1960), 1: 306. Burnside's biographer errs in suggesting that Lincoln and the cabinet opposed General Orders Number 38 rather than the arrest of Vallandigham. See Marvel, *Burnside*, 238.

<sup>37</sup>Edwin M. Stanton to Gen. Burnside, May 8, 1863, OR, series 1, vol. 23, pt. 2, 316; Burnside telegraphed Lincoln on May 8 thanking him for his message of support after Vallandigham's arrest. See Burnside to Lincoln, May 8, 1863, box 1, Letterbook number 2, p. 23, Ambrose E. Burnside Collection, Rhode Island Historical Society, Providence, hereafter cited as Burnside

Burnside learned of the president's unhappiness with the Vallandigham arrest and with his policy regarding opposition speech from two sources. In the evening of May 28, William R. Holloway, Morton's private secretary (and brother-in-law) took the night train to Cincinnati. The following morning, the day that Senator Douglas's trial was to commence, Holloway obtained a meeting with General Burnside at his headquarters, where the secretary conveyed a letter from Governor Morton:

Having received information that Mr. A. J. Douglass a Senator of this State is now in confinement in your Department for uttering treasonable sentiments, I have directed my private secretary Mr. Holloway to visit you concerning the arrest. Will you please inform him of the facts and give him any information that may be proper.<sup>38</sup>

Holloway informed Burnside that the president and his cabinet did not support the general's actions in the Vallandigham arrest or his general policy of arrests under General Orders Number 38.

On that same morning, after Holloway's departure from headquarters, similar information came from a separate but equally reliable source. Captain Cutts, who had served on the general's staff for some time, returned to Cincinnati from attending his father's funeral in Washington. Cutts, a pro-war Democrat, was the brother of Adele Cutts Douglas (widow of the late U.S. Senator Stephen A. Douglas), a Harvard College graduate, and an accomplished attorney. He had successfully tried Vallandigham weeks before, but had subsequently concluded that more military commission trials of opposition leaders under General Orders Number 38 would rebound against the army and the Lincoln

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Collection. Morton traveled to Washington on May 19 to confer with federal leaders, and probably learned of the sentiments of the cabinet meeting of that date. It is instructive to note that on May 20, while Morton was in Washington, U.S. Army Chief of Staff Maj. Gen. Henry W. Halleck—probably at the governor's prompting—wrote to Burnside of the dangers of injudicious district commanders and warned him to avoid conflicts with civil authorities, meaning the governors. See Halleck to Burnside, May 20, 1863, box 7, Ambrose E. Burnside Papers, RG 94, NARA.

<sup>38</sup>Morton to Burnside, May 28, 1863, box 8, Burnside Papers, RG 94, NARA.



administration. Cutts learned in Washington that Lincoln and the cabinet considered the Vallandigham arrest regrettable. According to a letter that he wrote to the president a few weeks later, upon his arrival in Cincinnati his “first act was to advise Genl Burnside not to try Mr. Douglas, State Senator from Indiana—telling him the country would not permit it—that there could be no more such trials as that of Mr. Vallandigham—and that the Administration were opposed to it.” According to Cutts, Burnside replied:

I have just informed Governor Morton's Private Secretary, sent here to see me about this very man to return and tell Governor Morton that I would try him if he violated order 38, and I said the same to Governor Tod himself. I want them to understand that they are Governors of single States, while I am Governor over five. Capt try every man who violates the order.<sup>39</sup>

Nonetheless, the news of the administration's opposition, conveyed by two reliable sources, rattled the general. He quickly telegraphed President Lincoln:

A messenger from Govr. Morton came to me this morning in reference to the arrest, by the military authorities of a citizen of Indiana. I understood from him that my action in the administration of affairs in this Department was not approved by a single member of your Cabinet.

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<sup>39</sup>Cutts to Lincoln, July 26, 1863, Abraham Lincoln Papers (formerly the Robert Todd Lincoln Papers), Library of Congress. Cutts wrote to Lincoln in an effort to obtain clemency after his court martial trial resulting from a quarrel among Burnside's staff officers. Cutts had also disgraced himself in Burnside's eyes by being caught spying on a woman while she undressed at a Cincinnati hotel. Burnside stripped him of the judge advocate appointment. The court martial sentenced Cutts to be dismissed from the army, but Lincoln reduced the sentence to a reprimand. Cutts later distinguished himself in battle. See Bing G. Spitler, *Hero of the Republic: The Biography of Triple Medal of Honor Winner J. Madison Cutts, Jr.* (Shippensburg, Pa., 2001). In his court martial trial, Cutts tried to enter evidence that the issue of military arrests under General Orders Number 38 was a central contention. Cutts called Burnside to the stand to testify, and asked him: “[W]ere you not also influenced by the fact that Capt Cutts differed with you on an important public question and you found it necessary to have some one who did agree with you more fully?” Burnside replied: “There were no such considerations as that entered into this appointment at all.” See Cutts court martial case file, p. 73.



The general, angry as well as shaken, wrote that this news and the previous telegram of support which Stanton had sent “convinces me that my action here has been a source of embarrassment to you.” However, the general voiced his continued faith in a stringent approach to suppressing dissent, writing, “My views as to the proper policy to be pursued in this Department are only changed in the belief that the present policy should be increased in rigor.” Burnside offered to resign his command if the president wished.<sup>40</sup> Lincoln replied promptly in a terse message: “When I shall wish to supersede you I will let you know. All the cabinet regretted the necessity of arresting, for instance, Vallandigham, some perhaps, doubting, that there was a real necessity for it—but, being done, all were for seeing you through with it.”<sup>41</sup>

That same morning, during this telegraphic exchange, the military commission trial of Indiana State Senator Douglas had commenced. Before a tribunal of army officers, Judge Advocate Goddard charged Douglas with violating General Orders Number 38 by expressing sympathy for the rebels and “declaring disloyal sentiments and opinions with the object and purpose of weakening the power of the Government in its efforts to suppress an unlawful Rebellion.” Goddard listed the specifications of the charge. He accused Douglas of uttering the following sentiments at the Crestline rally:

- “I thank God that I have not, by word or act, assisted to support the Administration in carrying on this unjust and unnecessary war”
- “That the war was not carried on to restore the Government, as it was, but for abolition purposes”
- “I advise you to arm yourselves and resist Military arrests; the sooner we resist such Military despotism the better; We have a right to resist Abe Lincoln’s dirty Provost Marshals”
- “Our once glorious Government is aiming to build up a despotism, and is gaining Military power as fast as possible for that purpose”

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<sup>40</sup>Burnside to Lincoln, May 29, 1863, Abraham Lincoln Papers, Library of Congress; also in box 1, Letterbook number 2, folder 6, pp. 131-32, Burnside Collection.

<sup>41</sup>Lincoln to Burnside, May 29, 1863, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick, N. J., 1953), 6: 237.

- “The present Administration is endeavoring to bring the people under Military law, so as to deprive them of the right of suffrage”
- “When next you go to the Ballot Box, carry your cartridge box with you”<sup>42</sup>

Milligan, on behalf of Douglas, initially declined to plead to the charge and specifications. As Vallandigham had done in his own trial, Milligan moved that the commission be discharged because it lacked jurisdiction to try the matter. Douglas, he argued, was neither in the military nor the naval service, and the court lacked the power to try matters dealing with free speech. The commission, as it did in the Vallandigham case, swept aside this jurisdictional argument. Milligan then entered a “not guilty” plea.<sup>43</sup>

Captain Goddard called before the court a series of prosecution witnesses to the speech Douglas gave at Crestline. All of them were among the pro-Union, Republican onlookers at the rally. One by one, the witnesses testified that they stood close to the speaker and heard clearly what Douglas said in his speech. Edwin Booth, a Crestline physician, testified that Douglas stated the war was “an abolition war” and was “unjust and unnecessary.” Douglas said that the recent local city elections at Indianapolis “had been controlled by military authority,” and that Democrats should march, armed, “in solid phalanx” to the ballot box to resist military despotism.<sup>44</sup> The speaker said military arrests like Vallandigham’s were arbitrary and “ought to be resisted.” “If that is treason,” he testified Douglas to have stated, “here is 160 pounds of it.” George W. Pierce, a storekeeper in Crestline, also testified that the

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<sup>42</sup>All quotes from Alexander J. Douglas military commission case file verbatim transcript, LL-449, box 469, RG 153, Judge Advocate General Records, NARA, hereafter Douglas trial transcript.

<sup>43</sup>See Exhibit “A,” Douglas trial transcript.

<sup>44</sup>Douglas may have seen reports in the previous day’s newspapers that Indianapolis Democrats had withdrawn from city elections in protest. See *Cincinnati Daily Gazette*, May 6, 1863. Voter intimidation featured in many elections throughout American history, but was especially problematic during the Civil War. Northern Democrats feared army intimidation like that at polls in the border states of Kentucky and Missouri would occur in their communities. See Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (New York, 2004), 217-81; and Glenn C. Altschuler and Stuart M. Blumin, *Rude Republic: Americans and Their Politics in the Nineteenth Century* (Princeton, N. J., 2004), 174-76.

speaker had stated that the Indianapolis election had been rigged by military authorities, disallowing Democratic votes. Douglas had advised Democrats to carry cartridge boxes to the polls. He also testified that Douglas said “illegal, arbitrary arrests” should be resisted, “but if a child came to him with proper authority, he could lead him away.” George Cochran, a Crestline sawyer, testified that Douglas “thanked God that there were no widows and orphans who could blame him for this war,” and stated military authorities at Indianapolis had challenged Democratic voters at the polls, and warned Ohio Democrats to go to the ballot boxes in the fall gubernatorial election with their cartridge boxes and resist military authorities if they were so challenged. Douglas had spoken of military arrests like Vallandigham’s as illegal and unconstitutional, and had said they ought to be resisted. William Kerr, a local farmer, (whom the *Bucyrus Weekly Journal* had mentioned was threatened by the crowd at the rally) testified that Douglas stated the war was to abolish slavery, and not to restore the government; if the country was to be saved, the Democratic Party would have to do it. Douglas had said that “Lincoln’s mean, dirty, low-lived Provost Marshals” had no right to arrest any citizen, but “if a legal officer should send a summons after him, a boy of ten years old could take him.”<sup>45</sup>

Milligan cross-examined each prosecution witness and carefully tested each man’s recollection of the speech. Small weaknesses in the testimony quickly emerged, most notably on the important issue of whether Douglas spoke of resisting military arrests or “illegal arrests.” Booth admitted that he could not recollect “the very words used by the prisoner.” When questioned by Milligan as to whether Douglas actually used the term “illegal arrests” rather than “military arrests,” the witness equivocated and replied that the speaker used both. Milligan succeeded in getting Pierce to admit that he did not recall that Douglas stated the government was trying to establish a despotic rule and deprive the people of the right to vote. Some of the witnesses stood firm in their testimony. Cochran could not be budged, and reiterated that Douglas “advised them to resist military arrests. ‘I advise you to resist all military authorities, for they are illegal.’” Likewise, Kerr refused to agree to Milligan’s suggestion that since he could not recall if Douglas or another speaker alluded to the government establishing a despotism, that other

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<sup>45</sup>Douglas trial transcript, 6-7, 11, 14, 17, 18.

utterances he had attributed to Douglas might actually have come from other speakers. Milligan also attempted to indict the activities of the Crestline Union League, the secret, paramilitary Republican organization, and suggested that the Republican witnesses may have attended the Democratic event to spy on their opponents and report the tenor of the speeches to military authorities, a charge prominent in the minds of Democrats at the time and reminiscent of the Vallandigham case. In regard to the issue of military arrests of civilians, he asked Booth: "Are you in the habit of attending Democratic meetings and do you understand their position on this question?" This question prompted an objection from the judge advocate and was overruled by the tribunal. Booth denied being sent to report on the speeches at the rally.<sup>46</sup>

Milligan called three witnesses to testify in defense of the prisoner and pressed home the distinction between criticism of military arrests and illegal arrests. All three witnesses were Democrats who had attended the Crestline rally and stood close to the speaker during his speech. Led by defense counsel, they all flatly contradicted the testimony of the army's witnesses. C. Fulton, a Bucyrus physician, was the first defense witness called, and he gave his testimony at the end of the first day of the trial. He noted that Douglas "said nothing about resisting military authority, but said he would resist arbitrary or illegal arrests." He testified that Douglas advised Democrats to go to the polls peaceably and "insist upon casting their votes," but if "prevented by bayonets" Democrats should take their cartridge boxes and return to the polls and "demand their right to vote." Douglas had said, in reference to the recent Indianapolis election, that an army major had told him that ballots should be examined, and those not marked for Union candidates should be thrown out. Fulton denied that Douglas spoke of the government establishing a despotism, but had said "there was more effort made to crush free speech than to crush the rebellion; and that the war was waged more for freeing the niggers and crushing free speech than putting down the rebellion." This, testified Fulton, was being done by Republican politicians, not by the government. Cross-examination by Captain Goddard failed to blur the fine distinction made between the Republican Lincoln administration and "Republican politicians."<sup>47</sup>

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<sup>46</sup>Ibid., 7, 13, 16, 20, 9-10.

<sup>47</sup>Ibid., 21-22, 24.

The commission reconvened the next morning at ten o'clock, and Milligan called his second witness. Samuel Hoyt, a telegraph operator at Crestline, denied all the army's charges regarding the subjects and tone of Douglas's speech. Hoyt denied that the speaker advised resisting military arrests, said provost marshals had no right to make arrests, or claimed that the government was attempting to create a despotism. Rather, the witness testified, at Milligan's subtle prompting, that Douglas blamed "advisers of the Administration" for trying to establish military rule and limit free expression of the people, and that "it would end in a military despotism." According to Hoyt, nothing in the speech was disrespectful of the government and the army. Asked about Douglas's reference to cartridge boxes, Hoyt testified that Douglas advised all to vote peaceably, but if soldiers deterred voters, to "get their cartridge boxes and go to the polls and vote if it was possible." Goddard's cross-examination failed to move the witness.<sup>48</sup>

The third and last defense witness was William Becker, a local farmer. Becker denied that Douglas spoke disrespectfully of the government, talked about government despotism, or claimed that he would not be arrested by Lincoln's provost marshals. Asked about cartridge boxes, the witness recalled Douglas stating that in the coming fall Ohio election voters should try to vote peaceably. "He said 'if we are driven away by bayonets, then we would be justified in depositing our votes, even if we had to take cartridge boxes ['']; he hoped it would not come to that." According to Becker, Douglas stated that he would submit to arrest by an eight-year-old child, provided the child had proper legal papers to support it. Goddard's cross-examination focused on Becker's admission that he was "hard of hearing," and may not have heard all that Douglas said. Becker replied: "I turned the good ear towards him and it might be possible that some things were said which I did not hear, but he spoke slow and loud and I paid attention."<sup>49</sup>

Neither the defense nor prosecution called further witnesses. Milligan then made a defense speech, a handwritten version of which was submitted to the tribunal.<sup>50</sup> A skilled and experienced attorney, with many criminal defense cases under his belt, Milligan was nonetheless

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<sup>48</sup>Ibid., 27-28.

<sup>49</sup>Ibid., 30, 32.

<sup>50</sup>See Exhibit "B," Douglas Trial Transcript.

faced with a novel challenge. Stirring courtroom oratory and emotional appeals to a jury, often useful in civil jury trials, had no place in military commission trials. Milligan had to construct a defense argument based on the facts as established by the testimony of witnesses and present it to a tribunal predisposed against his defendant.

Milligan first argued, citing the infamous Sedition Act of 1798, that in “actions for words” the “truth of the words” can be admitted as evidence. He also submitted that the existence of rumor, or the widespread belief or sentiment of a community, can be admitted. He then suggested the fact, known by all in the room, that two political parties existed, “one friendly to the Administration and the other distrustful.” When, he argued, all citizens adhere to the motto “eternal vigilance is the price of liberty,” then the distrustful part of the community will naturally keep a “zealous watchfulness” over those in power. He argued that “any restraint of that habit is calculated to chafe and irritate the people.” Restrictions on free speech which the “friends of the Administration” may find easy and reasonable “might be cause of greatest alarm” among the distrustful group.

Milligan conceded “for the sake of this argument” that the utterances charged to Douglas were directed at the Lincoln administration and the army, and not Republican politicians seeking to control them. However, he argued, the malice of the statements—the essential point in the army’s charge—was doubtful:

The opinions of honest men are not always matters of choice but are convictions forced upon them by evidenciary [sic] circumstances...to conceal those opinions is a restraint upon the freedom of thought to which the American people are not yet habituated...and in this spirit was the remark of the defendant made. “That the Administration were doing more to suppress free speech than the rebellion[.]” or those words [“] the present Administration is endeavoring to bring the people under military law so as to deprive them of the right of suffrage.[”]

Douglas, argued Milligan, believed exactly that, and “was unable to reconcile” the administration’s actions with an “intention...to restore the Government, or put down the rebellion.” Republicans had only weakened the North and strengthened the South by their actions and speeches about treasonable designs of the Democrats, Northern Democrats’

sympathy with the rebellion, and Republicans' "irritating clamour" about slavery. Thus, the defendant "justly" concluded that the administration was not endeavoring to restore the Union and suppress the rebellion; Douglas accordingly "thanked God that the widows and orphans could not look to him and say he was the cause of the war."

Milligan next turned to the evidence of the witnesses and pronounced it "by no means satisfactory." Every point raised by the army's witnesses was countered by the defense witnesses' testimony, he argued, and the tribunal should be cautious to credit it. The testimony of Booth, the "principal witness" for the army's case, was tainted by "feelings and bias" which made it unreliable. The circumstances of the Crestline rally were next recalled. "Mr. Vallandigham was the advertised Speaker," and the "news of his arrest was fresh and exciting and it could not be expected that the people would readily acquiesce in a proceeding so rare and to them full of seeming danger." In such a context, that Douglas should utter sentiments extemporaneously which to the commission "might seem out of place is not to be wondered at." Milligan argued that nothing Douglas said could be considered to express sympathy for the rebellion, to be disloyal, to be an attempt to discourage enlistments, or to be an incitement to resist the law. Regarding the specification that he uttered the words, "Our once glorious Government is aiming to build up a despotism," Milligan concluded with as much bombast as the venue allowed:

I know Mr. Douglas could not have uttered such a sentiment. Because he recognizes no government as ours whose powers are not founded on the Constitution of the United States the principles of which are rendered more sacred and glorious by the perils to which its votaries are daily exposed.

The commission withdrew to deliberate. How long those deliberations lasted and their nature is not recorded in the trial transcript. The commission returned and found Douglas guilty of two of the specifications:

- "I thank God that I have not, by word, or act, assisted to support the administration"
- "When next you go to the ballot-box carry your cartridge box with you"

The commission found him not guilty of uttering the following:

- “in carrying on this unjust and unnecessary war”
- “That the war was not carried on to restore the Government as it was, but for Abolition purposes”
- “I advise you to arm yourselves and resist *military arrests* [italics original], the sooner we resist such military despotism the better; we have a right to resist Abe Lincoln’s dirty Provost Marshals”
- “Our once glorious Government is aiming to build up a despotism, and is gaining military power as fast as possible to bring the people under military law, so as to deprive them of the right of suffrage”<sup>51</sup>

Milligan had succeeded in drawing the distinction between criticism of military arrests—Burnside’s favored means to quell resistance—and speech decrying mere “illegal arrests.” But Douglas had been found guilty of uttering words considered an incitement to violent resistance to authority. The commission judged Douglas to have spoken inflammatory language—his call to carry arms to the polls—in clear violation of General Orders Number 38. Douglas’s violent language, according to the judges, had been stronger than Vallandigham’s, which had criticized Burnside’s order and had merely encouraged voters to expel the tyrant “King Lincoln.”<sup>52</sup> Although the officers on the commission found Douglas guilty of a serious violation of Burnside’s order, they returned a verdict of “not guilty” to the overall charge and dismissed the case. With the weight of Lincoln’s displeasure pressing on Burnside, it is likely that the general instructed the tribunal to reach the “not guilty” verdict.

Even more surprising than its verdict, with the end of the Douglas trial the military commission adjourned *sine die*, never to reconvene. The tribunal empanelled to try cases of violations of General Orders Number 38, which had famously convicted Vallandigham, was no more. Though Cincinnati’s military prisons contained scores of prisoners

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<sup>51</sup>Douglas trial transcript, 32-33.

<sup>52</sup>Klement, *The Limits of Dissent*, 154; *The Trial of Hon. Clement L. Vallandigham, by a Military Commission: and the Proceedings Under His Application for a Writ of Habeas Corpus in the Circuit Court of the United States in the Southern District of Ohio* (Cincinnati, Ohio, 1863), 11-12; and OR, series 2, vol. 5, 634-35.



arrested under the order and awaiting trial, the commission was finished. Lincoln's disapproval, prompted by Morton's intervention, had forced Burnside to dismantle part of his apparatus to control disloyalty. The general reviewed the findings of the commission and ordered Douglas to be released from Kemper Barracks prison. Douglas went free on June 3. The Cincinnati newspapers reported the finding of the commission and the prisoner's release.<sup>53</sup>

On June 5 Douglas returned to Columbia City on the afternoon train and was met at the depot by a crowd of one thousand well-wishers and a town band. After a triumphant procession to the county courthouse "amidst the firing of cannons and the shoutings of freemen," Douglas described his arrest, imprisonment, and trial in dramatic terms, highlighting the cruelty of his military captors. He tore into the Republicans and blamed Union League treachery for his arrest. The assembly passed resolutions condemning the arrests of Douglas and Engelbert Zimmerman, the editor of the Democratic *Columbia City News*, whom General Hascall had arrested and whose newspaper he suppressed for a short period in May. The Democratic women present passed resolutions in praise of the two local martyrs for free speech. In the days and weeks to come, Douglas spoke at Democratic rallies in Whitley, Huntington, and Noble Counties, describing his arrest, imprisonment, and trial, and excoriating the Lincoln administration. The partisan crowds received and recognized him as a hero.<sup>54</sup>

Douglas's run-ins with military authority did not end there. His new status as a Democratic party hero and leader meant that he was recognized by Republicans as one of the "Copperhead ringleaders" in the region. In early July, newspapers reported that a "mob" in Whitley County had rescued deserters who had been arrested by the county provost marshal. The provost thereupon arrested several persons and sent them to Indianapolis to appear in federal court. Douglas, while not one of the "mob," was blamed for it. Several days later Capt. Hiram Iddings, provost marshal for the 10th Congressional District, rode into

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<sup>53</sup>Douglas trial transcript, 34; Burnside to commanding officer of military prison, June 2, 1863, RG 109, M345, roll 20, NARA; *Cincinnati Daily Commercial*, June 3 and 4, 1863; *Cincinnati Daily Gazette*, June 3, 1863. The (Columbus) *Daily Ohio State Journal* of June 2, 1863, reported that Douglas was released from prison on May 30.

<sup>54</sup>*Columbia City News*, June 9 and 16, 1863; *Huntington Democrat*, June 11, July 23, 1863. See also Towne, "Killing the Serpent Speedily," 52.

Columbia City at the head of two hundred troops—a detachment of the Invalids Corps and four Indiana Legion militia companies—intent on arresting deserters and more members of the “mob” who had aided them. After arresting several deserters, the troops assembled in the town before leaving for Kendallville and raised cheers for President Lincoln and Generals Meade and Grant. A man in the crowd of onlookers cried out “Three cheers for Vollandigham!” and ran. Several people in the crowd took up the cheer. Soldiers angrily gave chase in the direction of the original voice. In the ensuing melee, Douglas, standing in the crowd, panicked and “also broke and ran” in the same direction. Confusing Douglas for the man who yelled for Vollandigham, the soldiers seized him and forced him into one of their wagons. Douglas’s brother-in-law Eli W. Brown (Democratic county surveyor at the time) of Columbia City tried to interpose, but one of the soldiers shot at him four times, fortunately merely grazing him. The troops also seized Brown and hoisted him into the wagon. Both were threatened with death should they resist. The soldiers soon released both men when it became clear that Douglas had not cheered for Vollandigham. The troops arrested the cheerer and hauled him away to Kendallville.<sup>55</sup>

A study of the events surrounding Alexander J. Douglas’s arrest, trial, and release reveals several important issues. First, the episode highlights the impact the arrest of a political figure of merely local standing had on national policy. Historians who focus only on the arrests of national political figures like Clement Vollandigham during the Civil War overlook events of great significance. Democrats reacted to the news of the arrest of their local political leaders—their neighbors, people they knew or had met—not just to the news of national figures whom they knew only in the abstract. Douglas was a significant political figure in his corner of Indiana, and became temporarily so in a place where he merely visited. Ohio military officers deemed him “of sufficient importance” to arrest him for violating a ban on anti-administra-

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<sup>55</sup>*Columbia City News*, July 21, 1863; *Marshall County Republican*, July 30, 1863, quoting the *Columbia City Republican*. The Republican newspaper reported that soldiers found Douglas hiding in bushes, and characterized him as a “poor pusillanimous coward.” This was probably the editor’s payback for Douglas calling him a “pusillanimous coward and a liar” at his return celebration; see the *Logansport Journal* of August 1, 1863, quoting the *Noble County Journal*. The Democratic newspaper in Columbia City later noted that the person who shot at Brown was Joseph Latta, a deputy provost marshal. Latta was shot dead in August in DeKalb County while attempting to arrest a deserter. See *Columbia City News*, August 25, 1863.

tion speech. The Democrats of the Ohio town where he visited and gave a speech threatened serious violence as a result of his arrest. A show of military force was deemed necessary to quell unrest there. On his return to his Indiana home, Democrats turned out en masse to welcome him, show solidarity with their party, and demonstrate defiance of Republican and military authority. Douglas's arrest and subsequent release energized the Democrats in his corner of Indiana exactly as Morton had dreaded, an event replicated in almost every locale where similar military heavy-handedness occurred. More importantly, the repercussions of the arrest of this relatively minor political figure took place on the state and national levels. Burnside's arrest of Douglas, coupled with military arrests of newspaper editors, prompted Indiana's governor to intervene with the president and his cabinet. This entire sequence of events suggests that historians should burrow more deeply in the archives to understand better the ramifications of purportedly insignificant and merely incidental arrests.

Knowledge of the Douglas arrest and trial also overturns our understanding of the end of Burnside's intervention into political affairs in the District of the Ohio to override civil government. Governor Morton's lobbying in Washington had forced a president—who had not paid sufficient attention to political affairs in the Midwest or to the actions of his military commander there—to rein in Burnside. Though the general wanted to impose even more rigorous measures to silence criticism of the administration, he had no choice but to disband the military tribunal. In an attempt to retain as much of his get-tough policy as possible, Burnside held onto General Orders Number 38, but he no longer enforced it with arrests such as those of Vallandigham or Douglas, and no more military commission trials for violations of the order occurred. It is notable that when Burnside ordered the suppression of the *Chicago Times* on June 1, shutting down the region's most important anti-administration Democratic newspaper, he arrested neither its editor, Wilbur F. Storey, nor any of its staff.<sup>56</sup>

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<sup>56</sup>The best study of the suppression of the *Chicago Times* remains Craig D. Tenney, "To Suppress or Not to Suppress: Abraham Lincoln and the *Chicago Times*," *Civil War History*, 27 (September 1981), 248-59. Burnside reaffirmed General Orders Number 38 on June 2 with General Orders Number 87. See OR, series 1, vol. 23, pt. 2, 382. See also Justin E. Walsh, *To Print the News and Raise Hell: A Biography of Wilbur F. Storey* (Chapel Hill, N. C., 1968). For a study of the suppression of the Democratic press in Indiana during the war, see Stephen E. Towne, "Works of Indiscretion: Violence Against the Democratic Press in Indiana during the Civil War," *Journalism History*, 31 (Fall 2005), 138-49.

Second, it is critically important to reassess the dynamics between the Northern state governments and the federal government during the Civil War. The understanding of the relationship between the Northern governors and President Lincoln has been dominated by William Hesseltine's characterization of the state governors as weak, ineffectual, and dangerous to the Union's survival. In his effort to promote Lincoln as the nation's preserver, Hesseltine denigrated the governors. Morton, though perhaps the most effective of the Northern governors during the rebellion, received special derision at the historian's hands. Hesseltine's thesis has had widespread and lasting influence on generations of historians, who have seldom examined the complex interrelationships between state and federal governments.<sup>57</sup> The Douglas arrest episode, along with Morton's simultaneous effort to stop Hascall's policy of stifling Democratic newspaper speech in Indiana, should prompt a reassessment. Through this episode we see a president—preoccupied with the war effort in the East and the failures of the Army of the Potomac—passively inattentive to the deterioration of political conditions in the Midwestern states. Assigning Burnside to the Department of the Ohio shows that Lincoln neither understood the conditions on the ground nor had a plan to quell resistance in the region. Lincoln, carried along by the tide of events, failed to oversee his general in a region where disaffection and resistance to the federal government were becoming increasingly dangerous. Morton played a leading role in national affairs—his pressure on Lincoln and the cabinet ended military trials of civilians under General Orders Number 38, one of the most egregious instances of military interference in domestic political affairs in United States history.<sup>58</sup>

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<sup>57</sup>William B. Hesseltine, *Lincoln and the War Governors* (New York, 1948). For a recent assessment of the relationship between the president and the Northern governors during the Civil War that challenges Hesseltine's assumptions, see Stephen D. Engle, *All the President's Statesmen: Northern Governors and the American Civil War* (Milwaukee, Wis., 2006).

<sup>58</sup>Recent efforts by President George W. Bush to employ military commissions in the so-called "War on Terror" have prompted historians and legal scholars to reexamine the use of military commissions during the Civil War. An extensive literature has emerged, examples of which are Paul Finkelman, "Limiting Rights in Times of Crisis: Our Civil War Experience—A History Lesson for a Post 9-11 America," *Cardozo Public Law, Policy and Ethics Journal*, 2 (December 2003), 25-48; Michal R. Belknap, "A Putrid Pedigree: The Bush Administration's Military Tribunals in Historical Perspective," *California Western Law Review*, 38 (Spring 2002), 434-80; Belknap, "Alarm Bells from the Past: The Troubling History of American Military Commissions," *Journal of Supreme Court History*, 28, no. 3 (2003), 300-322; Frank J.

Morton's influence in Washington can be gauged by Burnside's increasing hostility to him. The general blamed the governor for halting his policy of rigorous military intervention in political matters. Since Burnside had taken command of the Department of the Ohio in March, Morton had fought him in multiple disputes over personnel issues, troop levels in Indiana, and military expeditions to quell disturbances in the state. The governor, according to the general, meddled with strictly military matters. While Burnside had succeeded in keeping the governor from dictating to him on military administration, the governor won the upper hand when the general tried to impose military solutions on political problems. Morton's success in removing Hascall and ending military commission trials so angered one of Burnside's staff officers that he turned the governor's portrait hanging in army headquarters upside down. Burnside continued to believe that civil authorities possessed neither the power nor the will to put down resistance to the draft enrollments in Indiana. "The civil law is too slow," he complained privately. Neighboring governors acceded to Burnside's requests to declare martial law in their states, but Morton resisted military authority and prevailed. Burnside's claim to be "Governor over five" states failed to take the Indiana governor into account.<sup>59</sup>

Finally, Milligan's defense of Douglas before the military commission was perhaps the high point of his political career, and proved to be his most powerful effort against the Lincoln administration. Democratic

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Williams, "Abraham Lincoln and Civil Liberty: Then and Now—The Southern Rebellion and September 11," *New York University Annual Survey of American Law*, 60 (2004), 463-89; Joseph R. Thysell, Jr., "Ex Parte Milligan: Lincoln's Use of Military Commissions," *White House Studies*, 5, no. 3 (2005), 443-55.

<sup>59</sup>Burnside to Jonathan Sturgis, June 7, 1863, box 8, Burnside Papers, RG 94, NARA. Burnside continued to try to use military power to suppress dissent in Indiana during a period of widespread resistance to the draft enrollment, writing to Secretary Stanton: "Notwithstanding the representations made to you that the exercise of military authority by me was unnecessary, I am more than ever satisfied that it is out of the power of the civil authorities to maintain the peace by prompt arrests and punishment. Can I have the authority to declare martial law at such time as I shall think necessary?" Burnside to Stanton, June 16, 1863, box 1, Letterbook number 2, Burnside Collection. Morton also rejected Burnside's attempt to declare martial law in Indiana during the Morgan Raid, and sent Burnside's request to Secretary of War Stanton. Morton to Stanton, July 11, 1863, in Governor Oliver P. Morton Telegraph Book number 16, 262, 264, Indiana State Archives, Indiana Commission on Public Records, Indianapolis, Indiana; Daniel Larned to Henry Larned, July 12, 1863, Larned Papers. Both Governor Tod of Ohio and Governor Richard Yates of Illinois agreed to the imposition of martial law during the Morgan Raid in July 1863. See OR, series 1, vol. 23, pt. 1, 701, 729, and 745.

newspapers published and praised his closing speech, and his successful defense of the party's principles burnished his reputation among antiwar Democrats in northern Indiana. Where he once was an also-ran politician, he now was a popular party hero and sought-after speaker. The Huntington attorney took an increasingly visible role in anti-war Democratic politics in his home county and all over northern Indiana. However, shortly after his military commission success, Milligan turned from legal means and embraced extra-legal violence as a method for political change. Emboldened by his new popularity, later in 1863 he joined the secret society known as the Organization of American Knights, previously known as the Knights of the Golden Circle. The organization changed its name in early 1864 to the Sons of Liberty. Thousands of members all over Indiana and neighboring states organized to protect deserters and to oppose the draft by force. The group secretly perfected plans to raise rebellion in the region, seize federal arsenals, release and arm rebel prisoners of war, and seize power as a diversionary measure to aid the Confederate cause. Milligan became the Sons of Liberty's military leader for the northeastern quarter of Indiana. He viewed his popularity and influence sufficient to make a bid for governor based on the strength of the antiwar wing of the Democratic Party, but the party rejected his nomination at the state convention. That summer the Sons of Liberty planned an uprising in Indiana. Tipped off to the plans, troops raided fellow leader Harrison H. Dodd's Indianapolis printing warehouse and discovered boxes full of guns and ammunition, as well as organizational records. In early October, a company of troops surrounded Milligan's Huntington house and arrested him for his role as a leader of the secret plot to seize arms and free rebel prisoners. He stood trial by military commission in Indianapolis for treason. It is a significant irony that Governor Morton, who a year before was an adamant opponent of the use of military commissions for trials of civilians, was now a leading force behind their use to batter his Democratic opponents in the election year of 1864. The military commission found Milligan guilty and sentenced him to death, but his sentence was commuted to life in prison, and in 1866, President Andrew Johnson pardoned him. While Milligan was imprisoned, a suit made its way to the U.S. Supreme Court, which ruled in 1866 that military trials of civilians shall not occur where martial law is not in place and the civil courts are open. *Ex parte Milligan* is today generally viewed as a landmark ruling defin-

ing the roles and limitations of military government and constitutional protections of the citizen.<sup>60</sup>

Alexander Douglas's political career wound down after he served out the remainder of his term in the state Senate. He practiced law in Columbia City and continued to serve as a school examiner for Whitley County. He gradually retreated from public affairs and increasingly turned to filling Lutheran church pulpits in Indiana, Ohio, and Kentucky. By the time his son, well-known pastor and best-selling novelist Lloyd C. Douglas (born in 1877), was old enough to be cognizant of his "papa," the elder man was living a quiet, bucolic existence as a country parson. If the writer was ever aware of his father's arrest and imprisonment for treasonous speech during the Civil War, his gentle and loving portrait of his father failed to disclose it. He wrote of his father, "How dearly did this kindhearted old man love peace!"<sup>61</sup>




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<sup>60</sup>See Samuel Klaus, ed., *The Milligan Case: Ex Parte: In the Matter of Lambdin P. Milligan* (New York, 1929); Kenneth M. Stamp, "The Milligan Case and the Election of 1864 in Indiana," *Mississippi Valley Historical Review*, 31 (June 1944), 41-58; Frank L. Klement, "The Indianapolis Treason Trials and *Ex Parte Milligan*," in Michal R. Belknap, ed., *American Political Trials* (Westport, Conn., 1981), 101-127. In his many writings on the Sons of Liberty and the Indianapolis treason trial, Klement argued consistently that Milligan was never a leader—let alone a member—of the organization. See, for example, Klement, "The Indianapolis Treason Trials," 112ff, and *Dark Lanterns*, 109. However, during the trial, Milligan's attorney, John R. Coffroth, admitted that his client was a member of the secret organization: "We claim the right to show that the purpose Mr. Milligan had in view in going into the order was to control and direct it so that it should do no mischief." See Klaus, ed., *The Milligan Case*, 404. Coffroth dropped that line of defense later in the trial. Biographical information on Milligan is scant. For limited information on him, see Florence L. Grayston, "Lambdin P. Milligan—a Knight of the Golden Circle," *Indiana Magazine of History*, 43 (December 1947), 379-91; and Darwin Kelley, "Lambdin P. Milligan's Appeal for State's Rights and Constitutional Liberty during the Civil War," *Indiana Magazine of History*, 66 (September 1970), 263-83. See also G. R. Tredway, *Democratic Opposition to the Lincoln Administration in Indiana*, Indiana Historical Collections, vol. 48 (Indianapolis, 1973), 155-59.

<sup>61</sup>Douglas, *Time to Remember*, 124.